



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 12 2003

Ms. Kelly Cates  
Secretary/Court Clerk  
Town of Marshall Creek  
P.O. Box 107  
Roanoke, Texas 76262

OR2003-8974

Dear Ms. Cates:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 192690.

The Town of Marshall Creek (the "town") received a request for "summary of services and invoices" to the town from a named attorney as well as documents sent by the town to this office in support of a previous request for a ruling. You claim that the requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note that this request seeks some information that is subject to a previous ruling from this office. In Open Records Letter No. 2003-8517 (2003), we considered a request that the town received for information relating to its radar equipment. Because the facts and circumstances surrounding that ruling do not appear to have changed, to the extent that the present request seeks information on which we have previously ruled, you must comply with our prior ruling. *See* Open Records Decision No. 673 at 6-7 (2001) (criteria of previous determination regarding specific information previously ruled on).

We turn now to the additional information that you have submitted for our review. We note that this information includes records that are subject to section 552.022 of the Government Code. This section provides that "the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law: . . . (16) information that is in a bill for attorney's fees and that is not privileged under the attorney-client privilege[.]" Gov't Code § 552.022(a)(16). The submitted information includes attorney fee bills, which are subject to section 552.022 and may only be withheld if confidential under other law.

You assert that the submitted information may be withheld pursuant to section 552.103 of the Government Code. This section is a discretionary exception to disclosure that is designed to protect a governmental body's interests and is therefore not other law that makes information expressly confidential for purposes of section 552.022(a). *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); *see also* Open Records Decision No. 522 (1989) (discretionary exceptions in general). Thus, the fee bills, which we have marked, may not be withheld pursuant to section 552.103. Because you have claimed no other exception to disclosure and the information in the fee bills is not otherwise confidential by law, the fee bills must be released in accordance with section 552.022.

We turn now to your arguments under section 552.103 for the remaining submitted information, which is not subject to section 552.022. Section 552.103 provides in part:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

....

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Gov't Code § 552.103(a), (c). A governmental body has the burden of providing relevant facts and documents sufficient to establish the applicability of section 552.103 to the information that it seeks to withhold. To meet this burden, the governmental body must demonstrate: (1) that litigation was pending or reasonably anticipated on the date of its receipt of the request for information and (2) that the information at issue is related to that litigation. *See Thomas v. Cornyn*, 71 S.W.3d 473, 487 (Tex. App.—Austin 2002, no pet.); *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479 (Tex. App.—Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.—Houston [1<sup>st</sup> Dist.] 1984, writ ref'd n.r.e.); *see also* Open Records Decision No. 551 at 4 (1990). Both elements of the test must be met in order for information to be excepted from disclosure under section 552.103.

The town has informed this office that the information at issue "is directly related to the requestor's pending appeal bond court case; may be relevant to issues directly related to his case that will arise in the litigation, and may be used as evidence in his Notice of Appeal

trial” and indicates that this litigation was pending when the town received this request for information. We understand that the town is a party to the pending litigation. We therefore find that the first prong of the section 552.103 test has been met. Furthermore, after reviewing your arguments and the submitted information, we agree that the remaining submitted information relates to the pending litigation for the purposes of section 552.103(a). Therefore, the town may generally withhold the remaining information pursuant to section 552.103.

However, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. *See Open Records Decision Nos. 349 (1982), 320 (1982)*. Thus, information to which all parties in the pending suit have had access is not excepted from disclosure under section 552.103(a), and it must be disclosed. Further, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

In summary, to the extent that the present request seeks information on which we have previously ruled, you must comply with our prior ruling. The town must release the marked fee bills in accordance with section 552.022. The remaining submitted information may be withheld pursuant to section 552.103.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body’s intent to challenge this letter ruling in court. If the governmental body fails to do one

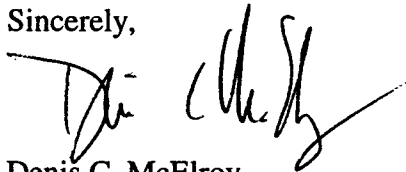
of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Denis C. McElroy  
Assistant Attorney General  
Open Records Division

DCM/lmt

Ref: ID# 192690

Enc. Submitted documents

c: Mr. Gary Tomlin  
P.O. Box 1565  
Roanoke, Texas 76262  
(w/o enclosures)